

HOUSE BILL NO. 89

INTRODUCED BY J. WITT

BY REQUEST OF THE DEPARTMENT OF JUSTICE

A BILL FOR AN ACT ENTITLED: "AN ACT CHANGING THE REQUIREMENTS OF THE ELECTRONIC VIDEO GAMBLING MACHINE AUTOMATED ACCOUNTING AND REPORTING SYSTEM; DEFINING "ELECTRONICALLY CAPTURED DATA"; ELIMINATING THE TAX CREDIT AND LOAN PROVISIONS FOR MACHINE OWNERS PARTICIPATING IN THE SYSTEM; ELIMINATING THE PLEDGE OF MACHINE TAXES TO GUARANTEE REPAYMENT OF THE LOANS; AMENDING SECTIONS 23-5-602, 23-5-610, 23-5-611, 23-5-621, AND 23-5-637, MCA; REPEALING SECTION 23-5-638, MCA, AND SECTION 10, CHAPTER 424, LAWS OF 1999; AND PROVIDING AN EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 23-5-602, MCA, is amended to read:

"23-5-602. Definitions. As used in this part, the following definitions apply:

(1) "Associated equipment" means all proprietary devices, machines, or parts used in the manufacture or maintenance of a video gambling machine, including but not limited to integrated circuit chips, printed wired assembly, printed wired boards, printing mechanisms, video display monitors, metering devices, and cabinetry.

~~(2) "Available connection date" means the date on which the department begins to accept applications for connection of machines to the automated accounting and reporting system.~~

~~(3)~~(2) (a) "Bingo machine" means an electronic video gambling machine that, upon insertion of cash, is available to play bingo as defined by rules of the department. The machine uses a video display and microprocessors in which, by the skill of the player, by chance, or by both, the player may receive free games or credits that may be redeemed for cash.

(b) The term does not include a slot machine or a machine that directly dispenses coins, cash, tokens, or anything else of value.

~~(4)~~(3) (a) "Draw poker machine" means an electronic video gambling machine that, upon insertion of cash, is available to play or simulate the play of the game of draw poker as defined by rules of the department. The machine uses a video display and microprocessors in which, by the skill of the player, by chance, or by both,

1 the player may receive free games or credits that may be redeemed for cash.

2 (b) The term does not include a slot machine or a machine that directly dispenses coins, cash, tokens,
3 or anything else of value.

4 (4) "Electronically captured data" means video gambling machine accounting information and records
5 of video gambling machine events, in electronic form, that are automatically recorded and communicated to the
6 department through an approved automated accounting and reporting system.

7 (5) "Gross income" means money put into a video gambling machine minus credits paid out in cash.

8 (6) (a) "Keno machine" means an electronic video gambling machine that, upon insertion of cash, is
9 available to play keno as defined by rules of the department. The machine uses a video display and
10 microprocessors in which, by the skill of the player, by chance, or by both, the player may receive free games
11 or credits that may be redeemed for cash.

12 (b) The term does not include a slot machine or a machine that directly dispenses coins, cash, tokens,
13 or anything else of value.

14 (7) "Licensed machine owner" means a licensed operator or route operator who owns a video gambling
15 machine for which a permit has been issued by the department.

16 (8) "Permitholder" means a licensed operator on whose premises is located one or more video gambling
17 machines for which a permit has been issued by the department."
18

19 **Section 2.** Section 23-5-610, MCA, is amended to read:

20 **"23-5-610. ~~(Temporary)~~ Video gambling machine gross income tax -- credit -- records --**
21 **distribution -- quarterly statement and payment.** (1) A licensed machine owner shall pay to the department
22 a video gambling machine tax of 15% of the gross income from each video gambling machine issued a permit
23 under this part. A licensed machine owner may deduct from the gross income amounts equal to amounts stolen
24 from machines if the amounts stolen are not repaid by insurance or under a court order, if a law enforcement
25 agency investigated the theft, and if the theft is the result of either unauthorized entry and physical removal of
26 the money from the machines or of machine tampering and the amounts stolen are documented.

27 ~~(2) (a) A licensed machine owner is entitled to a tax credit for each video gambling machine for which~~
28 ~~a permit has been issued under this part if:~~

29 ~~—— (i) the permit was active for the video gambling machine prior to the available connection date;~~

30 ~~—— (ii) the department determines that the video gambling machine is incapable, in the form in which it was~~

approved by the department, of communicating with the automated accounting and reporting system authorized by 23-5-637; and

~~_____ (iii) the licensed machine owner participates in the automated accounting and reporting system and incurs actual hardware or software costs prior to January 1, 2005, for conversion of the video gambling machine to make it compatible with the automated system.~~

~~_____ (b) The amount of the tax credit allowed under subsection (2)(a) is \$250 for each video gambling machine or the actual hardware and software cost necessary for conversion of the video gambling machine to the automated accounting and reporting system, whichever is less.~~

~~_____ (3) If a tax credit is claimed under subsection (2)(a), the credit is deducted from the tax due for the quarter or quarters that begin after the video gambling machine for which the tax credit is claimed is connected to the automated accounting and reporting system authorized by 23-5-637.~~

~~(4)(2)~~ A licensed machine owner shall keep a record of the gross income from each video gambling machine issued a permit under this part in the form the department requires. The records must at all times during the business hours of the licensee be subject to inspection by the department.

~~(5) (a)(3)~~ For each video gambling machine issued a permit under this part but not connected to the department's automated accounting and reporting system, a licensed machine owner shall, within 15 days after the end of each quarter and in the manner prescribed by the department, complete and deliver to the department a statement showing the total gross income, together with the total amount due the state as video gambling machine gross income tax for the preceding quarter. The statement must contain other relevant information that the department requires.

~~(b) For each video gambling machine issued a permit under this part that is connected to the department's automated accounting and reporting system, the department shall, within 5 working days after the end of each quarter, complete and deliver to the licensed machine owner (with a copy sent to the licensed operator, if different from the licensed machine owner, on whose premises the machine is placed) a statement showing the total gross income from the video gambling machine, together with the total amount due the state as video gambling machine gross income tax for the preceding quarter. The licensed machine owner shall remit the total amount due the state under this subsection within 25 days after the end of each quarter.~~

~~(6)(4)~~ Except as provided in subsection (7), the The department shall, in accordance with the provisions of 15-1-501, forward the tax collected under subsection ~~(5)~~ (3) to the general fund.

~~(7) Receipts from the taxes collected under this section are pledged and dedicated to guarantee~~

1 repayment of loans participated in under 23-5-638 in an amount sufficient to meet the prepayment obligation
2 for the fiscal year during which the loans are made. The amount of taxes pledged by this subsection is the dollar
3 amount of loan participation under 23-5-638 and must be allocated to a separate account in the short-term
4 investment pool. The board of investments is not entitled to use the proceeds from taxes collected under this
5 section to repay a loan made under 23-5-638 unless the board certifies that all other commercially available
6 means of collection on the loan have been exhausted. (Terminates December 31, 2005--sec. 10, Ch. 424, L.
7 1999.)

8 ~~23-5-610. (Effective January 1, 2006) Video gambling machine gross income tax -- credit --~~
9 ~~records -- distribution -- quarterly statement and payment.~~ (1) A licensed machine owner shall pay to the
10 department a video gambling machine tax of 15% of the gross income from each video gambling machine
11 issued a permit under this part. A licensed machine owner may deduct from the gross income amounts equal
12 to amounts stolen from machines if the amounts stolen are not repaid by insurance or under a court order, if a
13 law enforcement agency investigated the theft, and if the theft is the result of either unauthorized entry and
14 physical removal of the money from the machines or of machine tampering and the amounts stolen are
15 documented.

16 ~~----- (2) (a) A licensed machine owner is entitled to a tax credit for each video gambling machine for which~~
17 ~~a permit has been issued under this part if:~~

18 ~~----- (i) the permit was active for the video gambling machine prior to the available connection date;~~

19 ~~----- (ii) the department determines that the video gambling machine is incapable, in the form in which it was~~
20 ~~approved by the department, of communicating with the automated accounting and reporting system authorized~~
21 ~~by 23-5-637; and~~

22 ~~----- (iii) the licensed machine owner participates in the automated accounting and reporting system and~~
23 ~~incurs actual hardware or software costs prior to January 1, 2005, for conversion of the video gambling machine~~
24 ~~to make it compatible with the automated system.~~

25 ~~----- (b) The amount of the tax credit allowed under subsection (2)(a) is \$250 for each video gambling~~
26 ~~machine or the actual hardware and software cost necessary for conversion of the video gambling machine to~~
27 ~~the automated accounting and reporting system, whichever is less.~~

28 ~~----- (3) If a tax credit is claimed under subsection (2)(a), the credit is deducted from the tax due for the~~
29 ~~quarter or quarters that begin after the video gambling machine for which the tax credit is claimed is connected~~
30 ~~to the automated accounting and reporting system authorized by 23-5-637.~~

~~———— (4) A licensed machine owner shall keep a record of the gross income from each video gambling machine issued a permit under this part in the form the department requires. The records must at all times during the business hours of the licensee be subject to inspection by the department.~~

~~———— (5) (a) For each video gambling machine issued a permit under this part but not connected to the department's automated accounting and reporting system, a licensed machine owner shall, within 15 days after the end of each quarter and in the manner prescribed by the department, complete and deliver to the department a statement showing the total gross income, together with the total amount due the state as video gambling machine gross income tax for the preceding quarter. The statement must contain other relevant information that the department requires.~~

~~———— (b) For each video gambling machine issued a permit under this part that is connected to the department's automated accounting and reporting system, the department shall, within 5 working days after the end of each quarter, complete and deliver to the licensed machine owner (with a copy sent to the licensed operator, if different from the licensed machine owner, on whose premises the machine is placed) a statement showing the total gross income from the video gambling machine, together with the total amount due the state as video gambling machine gross income tax for the preceding quarter. The licensed machine owner shall remit the total amount due the state under this subsection within 25 days after the end of each quarter.~~

~~———— (6) The department shall, in accordance with the provisions of 15-1-501, forward the tax collected under subsection (5) to the general fund."~~

Section 3. Section 23-5-611, MCA, is amended to read:

"23-5-611. Machine permit qualifications -- limitations. (1) (a) A person who has been granted an operator's license under 23-5-177 and who holds an appropriate license to sell alcoholic beverages for consumption on the premises as provided in 23-5-119 may be granted a permit for the placement of video gambling machines on the person's premises.

(b) If video keno or bingo gambling machines were legally operated on a premises on January 15, 1989, and the premises were not on that date licensed to sell alcoholic beverages for consumption on the premises or operated for the principal purpose of gaming and there is an operator's license for the premises under 23-5-177, a permit for the same number of video keno, bingo, or combination poker-keno-bingo gambling machines as were operated on the premises on that date may be granted to the person who held the permit for such machines on those premises on that date.

(c) A person who legally operated an establishment on January 15, 1989, for the principal purpose of gaming and has been granted an operator's license under 23-5-177 may be granted a permit for the placement of ~~bingo and keno~~ video keno, bingo, or combination poker-keno-bingo gambling machines on the person's premises.

(2) An applicant for a permit shall disclose on the application form to the department any information required by the department consistent with the provisions of 23-5-176.

(3) A licensee may not have on the premises or make available for play on the premises more than 20 machines of any combination."

Section 4. Section 23-5-621, MCA, is amended to read:

"23-5-621. Rules. (1) The department shall adopt rules that:

(a) implement 23-5-637;

(b) describe the video gambling machines authorized by this part and state the specifications for video gambling machines authorized by this part;

(c) allow video gambling machines to be imported into this state and used for the purposes of trade shows, exhibitions, and similar activities;

(d) allow each video gambling machine ~~approved for connection to the department's automated accounting and reporting system~~ to offer any combination of approved poker, keno, and bingo games within the same video gambling machine cabinet if:

~~—— (i) after October 1, 2002, the owner of the video gambling machine has received approval of an application for connection of the machine to the automated accounting and reporting system to report video gambling machine information utilizing an approved automated accounting and reporting system or has entered into an agreement with the department for connection of the machine to the~~ to utilize an approved automated accounting and reporting system; or

~~—— (ii) after October 1, 2003, the owner of the video gambling machine has received approval of an application for connection of the machine to the automated accounting and reporting system or has entered into an agreement with the department for connection of the machine to the system, but the system is unavailable for connection;~~

(e) allow, on an individual license basis, licensed machine owners and operators of machines ~~connected to the department's~~ that utilize an approved automated accounting and reporting system to:

(i) electronically acquire and use for an individual licensed premises the information and data collected by the department for business management, accounting, and payroll purposes; however, the rules must specify that the data made available as a result of the department's an approved automated accounting and reporting system may not be used by licensees for player tracking purposes; and

(ii) acquire and use, at the expense of a licensee, a department-approved site controller;

~~(f) provide that, for video gambling machines connected to the department's automated accounting and reporting system, machine paper audit and accounting rolls need not be retained for more than 4 consecutive quarters; and~~

~~———(g)(f) minimize, whenever possible, the recordkeeping and retention requirements for video gambling machines that are connected to the department's~~ utilize an approved automated accounting and reporting system.

(2) The department's rules for an approved automated accounting and reporting system must, at a minimum:

(a) provide for confidentiality of information received through the approved automated accounting and reporting system within the limits prescribed by 23-5-115(6) and 23-5-116;

(b) prescribe specifications for maintaining the security and integrity of the approved automated accounting and reporting system;

(c) limit and prescribe the circumstances for electronic issuance of video gambling machine permits and electronic transfer of funds for payment of taxes, fees, or penalties to the department ~~based on the requirement that electronic permitting and transfer of funds may be done only when the department has a request in writing from the owner of the electronic funds transfer account;~~

~~(d) limit and prescribe the circumstances under which machines may be disabled for malfunctions or violations detected by use of the automated accounting and reporting system or for other violations of this chapter. Under no circumstances may machines connected to the automated system be disabled for violations except upon clear and convincing evidence supporting a determination made after notice and an opportunity for hearing and with the right of judicial review under the Montana Administrative Procedure Act.~~

~~———(e) provide for training by the department of technicians who install, maintain, and repair video gambling machines and components connected to the automated accounting and reporting system and for a department list of technicians who have completed department training.~~

(d) describe specifications and a review and testing process for approved automated accounting and

1 reporting systems to be utilized by licensed operators, including the requirements for electronically captured
2 data; and

3 (e) prescribe the frequency of reporting from an approved automated accounting and reporting system
4 and provide exceptions for geographically isolated video gambling operators."

5
6 **Section 5.** Section 23-5-637, MCA, is amended to read:

7 **"23-5-637. ~~Automated~~ Approved automated accounting and reporting system systems.** (1) For
8 the purposes of performing its duties under this chapter, minimizing regulatory costs, simplifying the reporting
9 of video gambling machine revenue data, preserving the integrity of video gambling machines within its
10 jurisdiction, lessening administrative and recordkeeping burdens for licensed machine owners and licensed
11 operators and the department, and enhancing the management tools available to the industry and the state, the
12 department may ~~operate and maintain, subject to the restrictions contained in subsections (3) and (4), approve~~
13 an automated accounting and reporting system for video gambling machines.

14 (2) Except as provided in subsection (4), ~~connection of video gambling machines to the department's~~
15 (5) or as provided in an agreement for multiple-game software, utilization of an approved automated accounting
16 and reporting system is voluntary for licensed machine owners and licensed operators who hold a valid current
17 license ~~prior to the available connection date.~~

18 (3) ~~(a) The department shall issue a request for proposals for the automated accounting and reporting~~
19 ~~system. The department may not sign a final contract for the purpose of acquiring an automated system unless~~
20 ~~it has obtained written confirmation from licensed machine owners who volunteer to participate in the automated~~
21 ~~system and whose commitment to participate covers 70% of the total number of video gambling machines that~~
22 ~~are capable of being connected to the automated system.~~

23 ~~———— (b) The 70% calculation must be based on video gambling machines that had permits on July 15 prior~~
24 ~~to the contract date and on an analysis by the department of the feasibility of upgrading specific video gambling~~
25 ~~machine models based on the age of the video gambling machines, technologies employed, numbers of video~~
26 ~~gambling machines in a model series, and existence or nonexistence of a licensed manufacturer to support~~
27 ~~upgraded conversions.~~

28 ~~———— (c) A request for proposals for the system must require that the proposal:~~

29 ~~———— (i) provide that communication protocols between connected video gambling machines and the central~~
30 ~~system and between connected video gambling machines and on-premises site controllers do not favor any one~~

1 ~~central system vendor or component manufacturer; and~~

2 ~~—— (ii) provide for computer backup and contingency planning to ensure that there will be no video gambling~~
3 ~~machine operation interruptions because of central system failures~~ An approved automated accounting and
4 reporting system must provide for the recording and entry of video gambling machine permit and tax information
5 and for the electronic transfer of funds through the use of web entry technology, the internet, or direct electronic
6 communication with the department.

7 (4) ~~After the available connection date:~~

8 ~~—— (a) a~~ A permit may not be issued for a video gambling machine manufactured after ~~the available~~
9 ~~connection date July 1, 2005,~~ that is not manufactured in a manner specifically designed to ~~allow the video~~
10 ~~gambling machine to be connected to the department's automated accounting and reporting system~~ comply with
11 communications standards adopted by department rules;.

12 ~~(b)(5) if~~ If a permitholder voluntarily ~~connects one or more video gambling machines at a premises to~~
13 ~~the department's~~ utilizes an approved automated accounting and reporting system for one or more video
14 gambling machines at a premises, all ~~connected~~ video gambling machines on the premises that utilize the
15 approved system, including video gambling machines replacing ~~connected~~ video gambling machines that utilize
16 the approved system, must ~~remain connected to the automated system~~ continue to use the approved system
17 as long as video gambling machines are operated on the premises; and

18 ~~—— (c) if there is a change in the majority ownership interests of a licensed gambling business, all video~~
19 ~~gambling machines located on the premises must be connected to the department's automated accounting and~~
20 ~~reporting system within 5 years after the date on which the majority ownership change is approved by the~~
21 ~~department, unless there are five or fewer video gambling machines on the premises and:~~

22 ~~—— (i) they are owned by the licensed operator; or~~

23 ~~—— (ii) the premises are located in a city, town, or county with a population of 3,000 or less, according to the~~
24 ~~last official decennial census."~~

25
26 NEW SECTION. Section 6. Repealer. Section 23-5-638, MCA, and section 10, Chapter 424, Laws
27 of 1999, are repealed.

28
29 NEW SECTION. Section 7. Effective date. [This act] is effective July 1, 2005.

30 - END -